IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7659 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARENTS ASSOCIATIONS

Versus

BOARD OF GOVERNORS SAINIK SCHOOL

Appearance:

MR BN RAVAL FOR MR BS SUPEHIA for Petitioners

MR SUNIL K SHAH for respondent Nos.1 & 2.

MR JS YADAV for Respondent No 3.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 24/03/2000

ORAL JUDGEMENT

Rule, service of which is waived by learned advocate Mr Sunil K. Shah on behalf of respondent Nos. 1 & 2 and Mr J.S.Yadav on behalf of respondent No.3. In view of the urgency involved in the matter, and at the request of the

learned advocates appearing for the parties, the matter is taken up, today, for final disposal.

Whether the revision of tuition fees and mess charges and the resultant additional payment by the students of Sainik School, by virtue of circular dated 18.6.99 and the letter dated 1.7.99 is legal and valid or not, is the sole and substantial question which has surfaced in this petition under Article 226 of the Constitution of India, for determination and adjudication.

Conspectus of material facts leading to the rise of this petition may, shortly, be articulated, at this juncture, so as to examine the merits of the petition and the challenge against it.

Petitioner No.1 is the Parents Association and petitioner No.2 is a student of Sainik School, whereas, respondent No.1 is the Board of Governors of Sainik School, respondent No.2 is the Principal of the Sainik School, Jamnagar and respondent No.3, is Union of India.

The Government through its Defence Ministry introduced the scheme of establishing Sainik Schools throughout the country with the primary object of preparing students academically, physically and mentally for entry into the National Defence Academy (NDA). The Sainik Schools are managed by the Society registered under the Society Registration Act. For the administration of such Sainik Schools throughout the country, the Board of Governors is constituted. Thus, all administrative and supervisory control of Sainik Schools vest with a body called Board of Governors, Sainik School Society. The Defence Minister is the Chairman and all Chief Ministers/Education Ministers of the States where the schools are established, are its Ex-officio members. Rule 2.01 of the Sainik School Society Rules and Regulations provides for the constitution of the Board. The Board of Governors is authorised to lay down and revise, whenever necessary, the fees/scholarship structure and sharing of expenditure between Central Government, State Government and the parents under Rule 2.11 (a)(ii)(ad) of the Sainik School Society Rules and Regulations. One of such Sainik Schools is situated at Balachadi in Jamnagar district where the capacity of the students is 575.

When the impugned circular in the month of April 1999, came to be issued, tuition fees for the year 1999-2000 was Rs.14,000 per annum and other expenses on account of clothing, pocket money, extra diet charges and other

incidental expenses was Rs.7,450/-. The total expenses for the year 1999-2000 was between Rs.21450 to Rs.22450/- for various classes for a general category full fee paying students.

It has not been disputed that Sainiks Schools are self-sustaining schools and the, only source of income is fees, scholarships collects from full fee paying students, State Government and Ministry of Defence. The expenditure for running the School, including pay and allowances of the staff are met out from the income received, as stated above.

According to the version of the respondent Sainik School, the expenditure of student is, at present, an amount of RS.28,118.97 ps. per capita. It is, therefore, contended by the respondent Sainik School that even with a revision from Rs.14000 to Rs.20000, the Management will not be able to meet with the entire expenditure of the School.

The respondent Sainik School has, also, placed reliance on the budget estimates for the year 1999-2000 which shows that in spite of revision of fees, in the proposed budget estimate, there shall be deficit of Rs.21,58,412/-. The amount of fees or scholarship, therefore, would not be sufficient to meet with the entire expenditure of the institution and the reserve fund which was created over the years has been depleted.

It is in this context, a Committee was formed under the Chairmanship of Financial Adviser (Defence Services), Ministry of Defence and comprising Joint Secretary (Training) and Chief Administrative Officer, Ministry of Defence, Joint Educational Adviser, Department of Education and Education Secretary of 8 State Government, by the Board of Governors, Sainik School Society to study the scheme of award of scholarship and funding pattern of Sainik Schools.

The Committee submitted its recommendations which came to be probed and examined and, thereafter, upon approval by the Defence Minister, the Chairman of the Board of Governors of Sainik School Society, approved the recommendations. Subsequently, it was decided to implement the revision of fees from Rs.14000 to Rs.20000 per annum, though the per capita expenditure of student exceeded, even at that stage, Rs.28,118.97 ps. for the academic session 1999-2000.

The respondent Sainik School has also implemented the 5th

Pay Commission Recommendations, on account of which, there arose, substantial increase of Rs.3 lacs per month for the pay and allowances of the staff. In other words, an additional burden of Rs.36 lacs per annum has also come on the respondent, Sainik School, on account of the implementation of the 5th Pay Commission Recommendations. By increasing an amount of Rs.6,000 in fees per year per cadet would come to Rs.34.50 lacs as there are about 575 boys and the revision enforced was of Rs.6,000/-. It means that there shall be still short-fall of Rs.1.50 lacs. Even the diet charges was required to be revised as the cost of three meals per day came to Rs.22.50 per head to be provided to each cadet.

Notwithstanding that, the Board of Governors decided that the parent would bear burden of Rs.20 per cadet per day for the academic session 1999-2000. A copy of this letter, in this connection, dated 18.6.99, issued by the Secretary, Sainik School Society is produced on record. This amount works out to Rs.5,500/- for a period of 9 months and 5 days being the total days in academic year. As the parents had already paid Rs.10/- per day per cadet, they have been asked to pay Rs.10 per day per cadet extra, which amounts to Rs.2750/- per cadet for 275 days and this amount would increase by 10 per cent every year.

There is no dispute about the fact that the parents of the students had given an undertaking, at the time of admission of their wards, that they would be ready to pay the enhanced rate of fees and incidental charges in future if any, revised or reconsidered. This aspect is not in dispute in this petition.

The petitioner No.2, K. L. Nanda, has also executed an undertaking and has also executed personal bond and security duly signed by the parents on non-judicial stamp. This, clearly, would indicate that before taking admission, the parents were well informed with regard to any increase in fees or incidental charges, if any, in future and have agreed to pay the same. The undertaking is unqualified in its term and by virtue of which, the parents undertook to pay the revised fees and charges in future at any time. The parents had been given sufficient time to pay up the fees upto 31st October, 1999 in full or in two installments by the notice dated 1st July, 1999.

It could, very well, be visualised from the record of the present case that upon acceptance of the recommendations of the 5th Pay Commission and a result of which, pay and

allowance of staff have increased at par with the employees of the Central Government and due to escalation in cost of essential commodities, the day-to-day running expenditure of the school has been increased. Therefore, revision of fees by nominal amount of Rs.6000/- and provision of three high quality meals per day per student at Rs.20 is considered to be the minimum and justified and, it is in this context, the grievance voiced by the petitioners in the petition are not meritorious.

It is also not in dispute that the State Government of Gujarat has not released any grant-in-aid to make good the budget deficit since the year 1992-93. As a result of which the Sainik School is compelled to utilise the reserve found to meet with the deficit and because of that condition the School is so critical and the reserve fund of the School has become nil. It is, in this context, it has been pleaded by the School that revision of fees was absolutely necessary and justified and more so when the parents of the children admitted in the Sainik School had given unqualified undertaking in this behalf.

The respondent Sainik School has, in this context, has raised the plea that the parents are required to pay the revised fees and diet charges and it is the responsibility of the State Government to revise the existing scholarship rates so that individual parents are less burdened, which has not been done by the State Government, about which there is no dispute.

From the set of facts enumerated and highlighted hereinbefore, emerging from the record of the present case, the contention that the revision of fees and diet charges unilaterally by the respondent Sainik School for the academic year 1999-2000 is in any way, vulnerable or unjust or unreasonable, more so, in the light of the undertaking filed by the parents of the students of the Sainik School, and again, more so, when the 5th Pay Commission Recommendations came to be accepted and the staff of the Sainik School came to be paid the salary and allowances pursuant to the recommendations of the 5th Pay Commission and upon its implementation, and again, more so, in view of the fact that the State Government has not paid or given the grant-in-aid for running the Sainik School in respect of the State, in the present case, State of Gujarat, is in any way violative of fundamental rights or any statutory right or for that purpose any contractual obligation. The spontaneous answer would be in the negative.

During the course of hearing before this Court, learned advocate appearing for the petitioners has not been able to, successfully, point out anything from the record of the present case that there exists a statutory right or even for that purpose, a right emanating from the contractual obligation requiring protection or defence at the hands of this Court with the aids of the provisions of Article 226 of the Constitution of India, and that too, in the teeth of the fact that parents have given unqualified undertaking that they will be obliged to pay the revision of fees at any time. Again, it is an admitted fact that the State Government has not given the grant-in-aid for the management of the Sainik School at Balachadi, Jamnagar which is in the territorial jurisdiction of the State Government of Gujarat. Notwithstanding, that the rise of Rs.6,000/- per annum in terms of the revision for the current academic year 1999-2000, is still far less than the actual cost incurred by the Sainik School Authorities. It is, successfully, pointed out from the record that the estimated deficit of Rs.21,58,412/- is required to be met with by the respondent Sainik School. It is evident from the record that the total expenses for the year 1999-2000 per student was Rs.21,450 to Rs.22450 for various classes for general category of full fees paying students. Despite that, the respondent Sainik School only raised fees of Rs.6,000/-. It is very clear from the record of the present case that per capita expenditure of the student in the Sainik School is at present Rs.28,118.97 ps. So, it is apparent that even with a revision of fees from Rs.14,000/- to Rs.20,000/-, the School Management will not be able to meet with the entire expenditure of the school management. Even the deficit worked out after the revision of fees is not less than Rs.21 lacs.

In the light of the aforesaid factual scenario emerging from the record of the present case, could it be said even for a moment, that the revision of fees and scholarship from Rs.14,000/- per annum to Rs.20,000/- per annum is, in any way, unjust, unreasonable and vulnerable. The spontaneous and positive answer would be in the negative. The respondent Sainik School could have raised little more fees as the expenditure per student has been worked out to Rs.28,118.97 ps. per annum. In other words, per capita expenditure of a student in Balachadi Sainik School, at Jamnagar is worked out, to Rs.28,118.97 ps. so that it will be apparent that even with the revision of fees from Rs.14000 to Rs.20000 per annum, for the current year 1999-2000, the Management will not be able to meet with the entire expenditure of the school Management. Not only that they have to also

bear the additional deficit of Rs.21,58,412. There is also no dispute about the fact that revision structure was constituted by the Expert Committee. The Committee formed was under the Chairmanship of the Financial Adviser, Defence Services of Ministry of Defence and comprising of Joint Secretary (Training) and Chief Administrative Officer, Ministry of Defence, Joint Educational Adviser, Department of Education and Education Secretary of 8 State Government. The Committee was constituted by the Board of Governors of the Sainik School which is headed by the Defence Minister. The Expert Committee had examined all the material and relevant aspects attributable to the fixation of revision of fees and scholarship and suggested only rise of Rs.6000 per annum. In other words, the amount of Rs.14,000/- per annum which came to be fixed in the previous academic year under the revision came to be raised to Rs.20,000/- for the current academic session of 1999-2000. Could it be said that the Committee consisting of experts appointed by the Board of Governors headed by the Defence Minister has taken into consideration any extraneous facts. Obviously, the answer would be in the negative. There is no any allegation against the methodology, working performance, and the recommendation of the Expert Committee appointed by the Board of Governors presided by the Defence Minister. Under what circumstances then, such a revision could be questioned and that too, with the aids of the provisions of Article 226 of the Constitution of India, which is equitable, plenary, discretionary jurisdiction. Nothing has been, successfully, shown on behalf of the petitioners in this petition, which would even, remotely, indicate the breach or the violation of the principles of natural justice or infraction of any statutory right or any infringement of the fundamental right. In absence of any breach of statutory, contractual or fundamental right and in absence of any arbitrariness, or any fancifulness on the part of the Management, it will not be open for this Court to examine the merits of such a case invoking the aids of the provisions of Article 226 of the Constitution of India.

On the contrary, it has been, successfully, noticed by this Court, from the course of submissions, and in the light of the record of the present case, that with a view to see that all of a sudden full revision is not imposed on the parents of the children of the Sainik School, the Expert Committee, after having taken into account, the overall picture emerging from the set of facts, only indicated and suggested to raise an amount of Rs.6,000/- per annum for the academic year 1999-2000, though, in

reality, the total cost per student is assessed at Rs.28,118.97 ps. It would, therefore, become evident that even with a revision of fees from Rs.14000 to Rs.20000 per annum, the School Management will not be able to meet with the entire expenditure of the Management of the School. Not only that, as worked out by the Expert Committee, the respondent Sainik School is obliged to bear the additional financial burden of Rs.36 lacs per year. In this set of facts, it could not be said, even for a moment, that revision of an amount of Rs.6,000/- per annum for the current year raising the amount from Rs.14000 to Rs.20000 would in any case, be unjust, unreasonable, capricious, arbitrary or vulnerable and could be questioned with the aids of the provisions of Article 226 of the Constitution of India. The petition, therefore, on that count itself, deserves to be ceremoniously, rejected at the threshold.

Before parting, it may be noted that the Constitutional Writ remedy under Article 226 has a purpose and policy behind it. In absence of any statutory or fundamental right or any other enforceable right being breached, or infracted, there would not arise any question of the aids of the provisions of Article 226 of the Constitution so as to afford legal defence or to provide Constitutional umbrella to the petitioners. It may, also, be noted that a Writ Court exercising its jurisdiction under Article 226 of the Constitution has, only, to consider the manner, mode and methodology and the merits of the process and not the product. It is not the quality of the decision which matters. It is the process which has to be considered. Unless and until, the petitioner, on whom the heavy burden lies to show that there is a fit and appropriate case for extraordinary, plenary, equitable, special jurisdiction under Article 226 of the Constitution, a perversity, capriciousness, arbitrariness, illegality, unconstitutionality or any other such recognisable vice is, successfully, pointed out or is spelt out from the record, the Writ Court would be at loath to interfere with the issue or a question which predominantly falls within the domain of the administration. The main anxiety and the role of the Writ Court while exercising the power under Article 226 of the Constitution of India, is to see as to whether the authority below or the Court or the Tribunal for that purpose, has acted, fairly, within its jurisdiction and within its defined parameters or not. It has a supervisory role. It has no appellate role. Bearing in mind the celebrated doctrines and principles on the point in question, this Court has no hesitation in finding that the issue which is raised by the petitioner in this case

against the revision of fees from Rs.14000 to Rs.20000 for the academic year 1999-2000 does not seem to be, in any way, unjust, unreasonable, illegal, perverse requiring interference by this Court.

Before parting, again it would be mentioned, at the cost of repetition, that there is no dispute about the fact that the parents of the wards have given an unqualified undertaking in favour of the School that they shall abide by the revision, if any, at any time in terms of the raising of fees. Despite the undertaking given by the parents, such an objection is raised. Not only that the Sainik School even after accepting the 5th Pay Commission Recommendations and successful implementation of the same by raising the pay and allowance of the teachers and staff of the Sainik School, could have claimed an amount of Rs.28,412 per annum by way of revision for the current academic session in view of the expenditure incurred by the Sainik School. Notwithstanding that the Sainik School only raised an amount of Rs.6000 by way of revision from Rs.14000 to Rs.20000. In the opinion of this Court, there is no substance in the present petition which would call for interference by this Court and, that too, with the aids of the provisions of Article 226 of the Constitution of India.

In support of his contentions, reliance is placed by the learned advocate for the petitioners on an interim order of the Hon'ble Kerala High Court in CMP NO.35156/99 in OP No.21288/99H. A copy of the said order is produced in support of the contention that in a similar case against the similar revision, a petition having been filed before the Hon'ble Kerala High Court, interim order against the resolution has been passed by the learned Single Judge on 18.11.99. In absence of the particulars placed before the Court and the respective case of the parties and in absence of the documentary evidence produced and relied on at that stage and that too an interim order passed by the Hon'ble Kerala High Court, is not binding to this Court, with due respect. It is a settled proposition of law that the interim order recorded by the Court is not, obviously, final and therefore not radiating any ratio. What should the interim order is always a matter of facts of a given case. Merely because similar notification or revision is challenged and interim order is given, in absence of any particular data or information, it cannot be contended that this Court should follow the course. Therefore, this Court is unable to accept the submission.

As against that, learned advocate appearing for the Sainik School has relied upon a decision of the Hon'ble

Orissa High Court in Original Jurisdiction Case No.10859 of 1999, and a copy of the said judgment of Division Bench of the Orissa High Court is produced on record and it has been contended that the Orissa High Court has dismissed the writ petition challenging the revision of fees, on merits. It has been held by the Orissa High Court, interpreting the revision by virtue of the impugned resolution on the touchstone of Article 226 of the Constitution that no illegality or irregularity was noticed and considering the overall picture emerging from the record of the case and appreciating the limited parameters of the provisions of Article 226 of the Constitution, refused to interfere with the enhancement of fee structure. The said writ petition therefore came to be dismissed. This decision fully reinforce the view taken by this Court.

In the result, this petition deserves rejection and only rejection and it is accordingly rejected. Rule discharged. No costs.

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